

Wednesday, May 5, 2010

MCPS threatens to sue county if funding is cut

Council backs recommendation that school employees be included in furloughs

by Erin Cunningham and Marcus Moore | Staff Writers

Further cuts to the schools' operating budget would cause "irreparable injury" to Montgomery County Public Schools, according to the draft of a lawsuit against the county that school officials shared with the County Council this week.

In response, Councilman Philip M. Andrews (D-Dist. 3) of Gaithersburg described the lawsuit as "heavy-handed."

On Monday, school officials said they would sue if the council cuts the system's operating budget beyond what has been proposed by County Executive Isiah Leggett (D), a council attorney told The Gazette.

That likelihood increased Tuesday, after the full council supported a recommendation from the council's Management and Fiscal Policy Committee that all government employees, including those who work for MCPS, take at least five days of unpaid leave in fiscal 2011.

That would mean a 1.9 percent pay cut for employees. And for MCPS, it would mean a reduction of its budget of at least \$33.7 million for fiscal 2011, which begins July 1.

In the lawsuit draft, the school system claims it would not be able to function as is under Leggett's proposed budget. However, the council making further cuts to the MCPS operating budget could cause "irreparable injury" to its operations, according to the lawsuit.

The school system also alleges that the council can only restore cuts recommended by the county executive, but cannot make further cuts.

"While the council may provide the school board with additional funding by restoring the county executive's proposed denials or reductions to the school board's budget, it may not usurp the county executive's role by itself making those denials or reductions," the lawsuit says.

Council attorney Michael Faden said Monday that he could not discuss many details of the possible litigation because they are confidential.

"The council hopes that litigation does not proceed, and I think that's clear," Faden said.

On Thursday, the council's Management and Fiscal Policy Committee unanimously recommended that all county agencies furlough employees for a minimum of five days. That same day, Councilwoman Duchy Trachtenberg (D-At large) of North Bethesda, who chairs that committee, said that regardless of whether the school system agrees to furlough employees, they are at risk of budget cuts.

Currently, the school system is the only Montgomery County agency to reject furloughs for its employees, who make up about two-thirds of all county workers. The council met Monday afternoon in

closed session to discuss the potential litigation.

Council President Nancy M. Floreen (D-At large) of Garrett Park said she would not discuss the details of the meeting.

"I think it's really important to be clear, we are in no position to require the school system to do anything," she said, referring to the furlough issue.

The school system has said it could sue the county based on the state's education law, which includes restrictions on when and how a school system's budget can be cut, Faden said.

He said the school system believes the council is limited to appropriating only what the executive has proposed — or more money than that amount.

The county disagrees, Faden said.

"That would be a really radical change in what has always been the case," he said. "The council is the final fiscal authority."

Councilwoman Nancy Navarro (D-Dist. 4) of Silver Spring said that when she served as president of the county school board, the state law now being referenced as the reason for potential litigation was never discussed.

She said she remains hopeful that a compromise can be reached.

The school system has an operating budget of about \$2.2 billion, and Leggett has recommended that it receive nearly level funding in his proposed \$4.27 billion spending plan for fiscal 2011.

"In three of the last 15 fiscal years, the council has reduced the school budget beyond the executive's reduction," Faden said. "And there was never any hint of litigation."

The state's maintenance-of-effort requirement has not been mentioned as a reason for the lawsuit.

By state law, maintenance of effort requires local governments to spend at least as much on education as they did the previous year.

On Monday, the county requested that the state school board waive the maintenance-of-effort requirement for fiscal 2011. That waiver, according to county information, is for \$137.7 million. The school system already is making cuts to its budget, its employees are not getting pay increases, and the system is increasing class size by one student per class.

If MCPS furloughed all its employees for five days, it would save \$33.7 million, according to data from Stephen B. Farber, the council's staff director.

"It's puzzling, with that level of pain, that the council wants another \$33 million," schools Superintendent Jerry D. Weast said Tuesday. "People need to slow down, take a deep breath, and work a little bit harder to understand what it takes to operationalize these decisions."

Leggett has proposed 10 furlough days for some nonschool county employees to save \$15 million. However, if MCPS employees were included in the furloughs, the same amount could be saved in 1.5

days.

"All employees should be asked to participate in furloughs" to create equity, Councilman Andrews said.

Councilman Michael J. Knapp (D-Dist. 2) of Germantown said Tuesday that he believed money saved through added furlough days should be used to offset the 100 percent increase in the energy tax that Leggett has proposed.

Trachtenberg said she has requested alternative plans be drafted that would furlough employees in all county agencies for a minimum of five days and allow lower-paid employees to give up less of their salary. She expects those recommendations to be presented in the next couple of weeks, she said.

Andrews has suggested that teachers take their furloughs on planning days, but Weast disagreed with the idea.

The planning days are needed "to give your children the kind of education they deserve in Montgomery County," Weast told Andrews during an April 8 education committee meeting. If teachers were furloughed during regularly scheduled days, the schools would have to close, school officials say.

On Thursday, Trachtenberg said the school system could furlough its central office employees and librarians, because they "aren't doing something that's specific to classroom instruction."

The council has not taken action on the school system's budget, but an informal decision will be made by May 20, with a final vote on May 27.